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(Original Signature of Member)

115TH CONGRESS
2D SESSION

H. R. _____

To require automatic sealing of certain criminal records, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. BLUNT ROCHESTER introduced the following bill; which was referred to the Committee on _____

A BILL

To require automatic sealing of certain criminal records, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Clean Slate Act of
5 2018”.

6 **SEC. 2. SEALING OF CERTAIN RECORDS.**

7 (a) AMENDMENT.—Subchapter A of chapter 227 of
8 title 18, United States Code, is amended by adding at the
9 end the following:

1 **“§ 3560. Automatic sealing of certain records**

2 “(a) DEFINITIONS.—In this section—

3 “(1) the term ‘covered individual’ means an in-
4 dividual who—

5 “(A) is not a sex offender;

6 “(B)(i) has been arrested for a Federal of-
7 fense; or

8 “(ii) has been convicted of an offense
9 under section 404 of the Controlled Substances
10 Act (21 U.S.C. 844) or any Federal nonviolent
11 offense involving marijuana; and

12 “(C) in the case of a conviction described
13 in subparagraph (B)(ii), has fulfilled each re-
14 quirement of the sentence for the offense, in-
15 cluding—

16 “(i) completing each term of imprison-
17 ment, probation, or supervised release; and

18 “(ii) satisfying each condition of im-
19 prisonment, probation, or supervised re-
20 lease;

21 “(2) the term ‘nonviolent offense’ means an of-
22 fense that is not a crime of violence, as defined in
23 subsections (a) and (c) of section 3156; and

24 “(3) the term ‘sex offender’ has the meaning
25 given the term in section 111 of the Adam Walsh

1 Child Protection and Safety Act of 2006 (42 U.S.C.
2 16911).

3 “(b) AUTOMATIC SEALING FOR CERTAIN ARRESTS
4 AND NONVIOLENT OFFENSES.—

5 “(1) IN GENERAL.—At the time of sentencing
6 of a covered individual for a conviction pursuant to
7 section 404 of the Controlled Substances Act (21
8 U.S.C. 844) or of any Federal nonviolent offense in-
9 volving marijuana, the court shall enter an order
10 that each record and portion thereof that relates to
11 the offense shall be sealed automatically on the date
12 that is one year after the covered individual fulfills
13 each requirement of the sentence, except that such
14 record shall not be sealed if the individual has been
15 convicted of a subsequent criminal offense.

16 “(2) ACQUITTAL; DETERMINATION NOT TO FILE
17 CHARGES.—

18 “(A) ACQUITTAL.—60 days after the date
19 on which a covered individual is acquitted, ex-
20 onerated, or otherwise subject to a judgment
21 which did not result in a conviction for a Fed-
22 eral offense, each record or portion thereof that
23 relates to the Federal offense shall be sealed
24 automatically.

1 “(B) DETERMINATION NOT TO FILE
2 CHARGES.—

3 “(i) IN GENERAL.—If a covered indi-
4 vidual is arrested for a Federal offense and
5 the Government does not file charges
6 against the covered individual in relation
7 to the Federal offense before the date that
8 is 180 days after the date on which the ar-
9 rest was made, each record or portion
10 thereof that relates to the arrest and Fed-
11 eral offense shall be sealed automatically
12 on such date.

13 “(ii) UNSEALING FOR FILING OF
14 CHARGES.—At the request of the Govern-
15 ment, a court may unseal a record sealed
16 under clause (i) in order for the Govern-
17 ment to file charges against the covered in-
18 dividual in relation to the Federal offense
19 described in clause (i).

20 “(iii) LIMITATION.—If a record is un-
21 sealed under clause (ii), the record may
22 only be resealed in accordance with sub-
23 paragraph (A), paragraph (1), or para-
24 graph (2).

1 “(c) NOTICE OF AUTOMATIC SEALING.—Not later
2 than 60 days after an individual is arrested for a Federal
3 offense, the Attorney General shall, in writing, inform the
4 individual of the automatic sealing of records and the ef-
5 fect of such sealing under this section.

6 “(d) EFFECT OF SEALING ORDER.—

7 “(1) PROTECTION FROM ACCESS.—Except as
8 provided in paragraph (3), a record that has been
9 sealed under subsection (b) shall not be accessible to
10 any person.

11 “(2) PROTECTION FROM PERJURY LAWS.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), a covered individual with re-
14 spect to whom a record has been sealed under
15 subsection (b) shall not be required to disclose
16 such information, and shall not be subject to
17 prosecution under any civil or criminal provi-
18 sion of Federal or State law relating to perjury,
19 false swearing, or making a false statement, in-
20 cluding under section 1001, 1621, 1622, or
21 1623, for failing to recite or acknowledge any
22 information that has been sealed with respect to
23 the offense, or respond to any inquiry made of
24 the covered individual, relating to the protected
25 information.

1 “(B) EXCEPTION.—A covered individual
2 shall disclose information contained in a record
3 that has been sealed under subsection (b)—

4 “(i) when testifying in court;

5 “(ii) in the course of questioning by a
6 law enforcement officer in connection with
7 a subsequent criminal investigation ; or

8 “(iii) in connection with employment
9 described in subclause (I) or (II) of para-
10 graph (3)(A)(ii) that the individual is seek-
11 ing.

12 “(3) BACKGROUND CHECKS.—Except as pro-
13 vided in paragraph (4), a sealed record of a covered
14 individual shall not be included in any background
15 check conducted on the covered individual.

16 “(4) LAW ENFORCEMENT AND COURT EXCEP-
17 TION.—

18 “(A) ACCESS.—An officer or employee of a
19 law enforcement agency or a court may access
20 a sealed record of a covered individual in the
21 possession of the agency or court, or another
22 law enforcement agency or court, solely—

23 “(i) for investigatory or prosecutorial
24 purposes; or

1 “(ii) for a background check that re-
2 lates to—

3 “(I) employment with a law en-
4 forcement agency; or

5 “(II) any position that a Federal
6 agency designates as a—

7 “(aa) national security posi-
8 tion; or

9 “(bb) high-risk, public trust
10 position.

11 “(B) DISCLOSURE.—An officer or em-
12 ployee of a law enforcement agency or a court
13 may disclose information contained in a sealed
14 record only in order to carry out the purposes
15 described in subparagraph (A).

16 “(e) PENALTY FOR UNAUTHORIZED DISCLOSURE.—

17 “(1) IN GENERAL.—Whoever knowingly ac-
18 cesses or discloses information contained in a sealed
19 record in a manner that is prohibited under this sec-
20 tion, shall be fined under this title, imprisoned for
21 not more than 1 year, or both.

22 “(2) RULE OF CONSTRUCTION.—Nothing in
23 this subsection prevents a covered individual or an
24 individual who was the victim of an offense from ac-

1 censing or disclosing information contained in a
2 sealed record.

3 “(f) RULEMAKING.—The Attorney General shall, by
4 rule, establish a process to ensure that any record in the
5 possession of a Federal agency required to be sealed under
6 this section, is automatically sealed in accordance with this
7 section.

8 “(g) APPLICABILITY.—This section shall apply to an
9 arrest or conviction that occurred or was entered before,
10 on, or after the date of enactment of this section. Not later
11 than 2 years after the date of the enactment of this sec-
12 tion, the Attorney General shall ensure that any record
13 related to an arrest or conviction that occurred or was en-
14 tered prior to the automatic sealing of such a record,
15 which record is required to be sealed under this section,
16 is so sealed.

17 **“§ 3561. Sealing of certain records upon petition**

18 “(a) DEFINITIONS.—In this section—

19 “(1) the term ‘covered nonviolent offense’
20 means a Federal criminal offense that is not—

21 “(A) a crime of violence (as defined in sub-
22 sections (a) and (c) of section 3156); or

23 “(B) a sex offense (as that term is defined
24 in section 111 of the Sex Offender Registration
25 and Notification Act (42 U.S.C. 16911));

1 “(2) the term ‘eligible individual’ means an in-
2 dividual who—

3 “(A) has been convicted of a covered non-
4 violent offense;

5 “(B) has fulfilled each requirement of the
6 sentence for the covered nonviolent offense, in-
7 cluding—

8 “(i) completing each term of imprison-
9 ment, probation, or supervised release; and

10 “(ii) satisfying each condition of im-
11 prisonment, probation, or supervised re-
12 lease;

13 “(C) has not been convicted of more than
14 2 felonies that are covered nonviolent offenses,
15 including any such convictions that have been
16 sealed (except that for purposes of this sub-
17 paragraph, 2 or more felony convictions that
18 are covered nonviolent offenses arising out of
19 the same act, or acts committed at the same
20 time, shall be treated as 1 felony conviction);
21 and

22 “(D) has not been convicted of any felony
23 that is not a covered nonviolent offense;

24 “(3) the term ‘petitioner’ means an individual
25 who files a sealing petition;

1 “(4) the term ‘protected information’, with re-
2 spect to a covered nonviolent offense, means any ref-
3 erence to—

4 “(A) an arrest, conviction, or sentence of
5 an individual for the offense;

6 “(B) the institution of criminal pro-
7 ceedings against an individual for the offense;
8 or

9 “(C) the result of criminal proceedings de-
10 scribed in subparagraph (B);

11 “(5) the term ‘sealing hearing’ means a hearing
12 held under subsection (c)(2); and

13 “(6) the term ‘sealing petition’ means a petition
14 for a sealing order filed under subsection (b).

15 “(b) RIGHT TO FILE SEALING PETITION.—

16 “(1) IN GENERAL.—On and after the date that
17 is 1 year after the date on which the eligible indi-
18 vidual has fulfilled each requirement described in
19 subsection (a)(2)(B), an eligible individual may file
20 a petition for a sealing order with respect to a cov-
21 ered nonviolent offense in a district court of the
22 United States.

23 “(2) NOTICE OF OPPORTUNITY TO FILE PETI-
24 TION.—

1 “(A) IN GENERAL.—If an individual is
2 convicted of a covered nonviolent offense and
3 will potentially be eligible to file a sealing peti-
4 tion with respect to the offense upon fulfilling
5 each requirement of the sentence for the offense
6 as described in subsection (a)(2)(B), the court
7 in which the individual is convicted shall, in
8 writing, inform the individual, on each date de-
9 scribed in subparagraph (B), of—

10 “(i) that potential eligibility;

11 “(ii) the necessary procedures for fil-
12 ing the sealing petition; and

13 “(iii) the benefits of sealing a record.

14 “(B) DATES.—The dates described in this
15 subparagraph are—

16 “(i) the date on which the individual
17 is convicted; and

18 “(ii) the date on which the individual
19 has completed every term of imprisonment,
20 probation, or supervised release relating to
21 the offense.

22 “(c) PROCEDURES.—

23 “(1) NOTIFICATION TO PROSECUTOR.—If an in-
24 dividual files a petition under subsection (b), the dis-

1 trict court in which the petition is filed shall provide
2 notice of the petition—

3 “(A) to the office of the United States at-
4 torney that prosecuted the petitioner for the of-
5 fense; and

6 “(B) upon the request of the petitioner, to
7 any other individual that the petitioner deter-
8 mines may testify as to the—

9 “(i) conduct of the petitioner since the
10 date of the offense; or

11 “(ii) reasons that the sealing order
12 should be entered.

13 “(2) HEARING.—

14 “(A) IN GENERAL.—Not later than 180
15 days after the date on which an individual files
16 a sealing petition, the district court shall—

17 “(i) except as provided in subpara-
18 graph (D), conduct a hearing in accord-
19 ance with subparagraph (B); and

20 “(ii) determine whether to enter a
21 sealing order for the individual in accord-
22 ance with paragraph (3).

23 “(B) OPPORTUNITY TO TESTIFY AND
24 OFFER EVIDENCE.—

1 “(i) PETITIONER.—The petitioner
2 may testify or offer evidence at the sealing
3 hearing in support of sealing.

4 “(ii) PROSECUTOR.—The office of a
5 United States attorney that receives notice
6 under paragraph (1)(A) may send a rep-
7 resentative to testify or offer evidence at
8 the sealing hearing in support of or
9 against sealing.

10 “(iii) OTHER INDIVIDUALS.—An indi-
11 vidual who receives notice under paragraph
12 (1)(B) may testify or offer evidence at the
13 sealing hearing as to the issues described
14 in clauses (i) and (ii) of that paragraph.

15 “(C) MAGISTRATE JUDGES.—A magistrate
16 judge may preside over a hearing under this
17 paragraph.

18 “(D) WAIVER OF HEARING.—If the peti-
19 tioner and the United States attorney that re-
20 ceives notice under paragraph (1)(A) so agree,
21 the court shall make a determination under
22 paragraph (3) without a hearing.

23 “(3) BASIS FOR DECISION.—

24 “(A) IN GENERAL.—In determining wheth-
25 er to enter a sealing order with respect to pro-

1 tected information relating to a covered non-
2 violent offense, the court—

3 “(i) shall consider—

4 “(I) the petition and any docu-
5 ments in the possession of the court;
6 and

7 “(II) all the evidence and testi-
8 mony presented at the sealing hear-
9 ing, if such a hearing is conducted;

10 “(ii) may not consider any non-Fed-
11 eral nonviolent crimes for which the peti-
12 tioner has been arrested or proceeded
13 against, or of which the petitioner has been
14 convicted; and

15 “(iii) shall balance—

16 “(I)(aa) the interest of public
17 knowledge and safety; and

18 “(bb) the legitimate interest, if
19 any, of the Government in maintain-
20 ing the accessibility of the protected
21 information, including any potential
22 impact of sealing the protected infor-
23 mation on Federal licensure, permit,
24 or employment restrictions; against

1 “(II)(aa) the conduct and dem-
2 onstrated desire of the petitioner to be
3 rehabilitated and positively contribute
4 to the community; and

5 “(bb) the interest of the peti-
6 tioner in having the protected infor-
7 mation sealed, including the harm of
8 the protected information to the abil-
9 ity of the petitioner to secure and
10 maintain employment.

11 “(B) BURDEN ON GOVERNMENT.—The
12 burden shall be on the Government to show
13 that the interests under subclause (I) of sub-
14 paragraph (A)(iii) outweigh the interests of the
15 petitioner under subclause (II) of that subpara-
16 graph.

17 “(4) WAITING PERIOD AFTER DENIAL.—If the
18 district court denies a sealing petition, the petitioner
19 may not file a new sealing petition with respect to
20 the same offense until the date that is 2 years after
21 the date of the denial.

22 “(5) UNIVERSAL FORM.—The Director of the
23 Administrative Office of the United States Courts
24 shall create a universal form, available over the

1 Internet and in paper form, that an individual may
2 use to file a sealing petition.

3 “(6) FEE WAIVER.—The Director of the Ad-
4 ministrative Office of the United States Courts shall
5 by regulation establish a minimally burdensome
6 process under which indigent petitioners may obtain
7 a waiver of any fee for filing a sealing petition.

8 “(7) EFFECT OF SEALING.—Subsections (d)
9 and (e) of section 3560 shall apply to any record
10 that is sealed under this section.

11 “(8) REPORTING.—Not later than 2 years after
12 the date of enactment of this section, and each year
13 thereafter, each district court of the United States
14 shall issue a public report that—

15 “(A) describes—

16 “(i) the number of sealing petitions
17 granted and denied under this section; and

18 “(ii) the number of instances in which
19 the office of a United States attorney sup-
20 ported or opposed a sealing petition;

21 “(B) includes any supporting data that the
22 court determines relevant and that does not
23 name any petitioner; and

1 “(C) disaggregates all relevant data by
2 race, ethnicity, gender, and the nature of the
3 offense.

4 “(9) PUBLIC DEFENDER ELIGIBILITY.—

5 “(A) IN GENERAL.—The district court
6 may, in its discretion, appoint counsel in ac-
7 cordance with the plan of the district court in
8 operation under section 3006A to represent a
9 petitioner for purposes of this section.

10 “(B) CONSIDERATIONS.—In making a de-
11 termination whether to appoint counsel under
12 subparagraph (A), the court shall consider—

13 “(i) the anticipated complexity of the
14 sealing hearing, including the number and
15 type of witnesses called to advocate against
16 the sealing of the protected information of
17 the petitioner; and

18 “(ii) the potential for adverse testi-
19 mony by a victim or a representative of the
20 office of the United States attorney.

21 “(10) RULE OF CONSTRUCTION.—Nothing in
22 this section may be construed to require a covered
23 individual (as such term is defined in section 3560)
24 to submit a sealing petition with respect to records

1 required to be automatically sealed under section
2 3560.”.

3 (b) TABLE OF SECTIONS.—The table of sections for
4 subchapter A of chapter 227 of title 18, United States
5 Code, is amended by inserting after the item relating to
6 section 3559 the following:

“3560. Automatic sealing of certain records.

“3561. Sealing of certain records upon petition.”.